

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 793 OF 2018

VILAS BHALCHANDRA KHADKE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. Kale Ajeet B.

AGP for Respondents No. 1 to 5 :

Mr. K. B. Jadhavar

Advocate for Respondent No. 6 : Mr. P. R. Patil

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CORAM: S. V. GANGAPURWALA &
A. M. DHAVALA, JJ.

DATE: 18th MARCH, 2019

PER COURT :

1. The land of the petitioner was acquired under the provisions of the Maharashtra Regional and Town Planning Act, 1966 read with the Land Acquisition Act, 1894. The petitioner filed a reference under Section 18 of the Land Acquisition Act, 1894. The reference Court enhanced the compensation amount. The petitioner filed execution bearing Regular Darkhast No. 157 of 2014 for recovery of an amount of Rs. 1,50,11,728/-

with interest and other benefits awarded by the reference Court totaling to Rs. 4,51,40,505/-. It appears that respondent no. 6 herein made a statement that it is not in a sound financial state, hence cannot pay the decretal amount. The joint pursis came to be filed before the executing Court by the petitioner and respondent no. 6. It appears that matter was settled between the parties in the execution. It was agreed that the petitioner should refund the amount of compensation received by him and that respondent would issue the TDR to the petitioner on receipt of amount of Rs.37,31,913/- for the award passed by the Special Land Acquisition Officer.

2. As per the settlement, subsequently, joint pursis came to be filed by the petitioner and respondent no. 6 wherein it is agreed that the petitioner has deposited an amount of Rs.25,91,606/- by cheque dated 07.05.2014 and additional amount of Rs.2,32,000/- towards the processing fees. It is also further agreed that

respondent no. 6 has issued TDR certificate to the petitioner as per the compromise. The said joint pursis is filed before the executing Court in Darkhast No. 157 of 2014 dated 11.06.2014.

3. According to learned counsel for the petitioner, the petitioner has already utilised part of the TDR certificate and has sold it. Subsequently, resolution is passed by the Municipal Corporation, Jalgaon on 28.02.2017 bearing Resolution No. 601 to the effect that while sanctioning the TDR there is large scale malfeasance and the authorities have played fraud against them. The action should be taken and the TDR certificate should be cancelled. It was further resolved that the matter shall be taken up before the higher Court. The said Resolution is assailed in the present writ petition.

4. Mr. Patil, learned Advocate for respondent no. 6 submits that the Resolution passed by the Municipal Corporation can be challenged by the

petitioner before the State Government under Section 451 of the Maharashtra Municipal Corporation Act, 1949. It is further submitted that the petitioner is paid an amount of Rs.37,31,913/- and he has returned back only an amount of Rs. 25,91,606/- and Rs. 2,32,000/-. It is further contended by learned counsel for the respondent that respondent no. 6 pointed out before the Court that in fact the petitioner is required to pay an amount of Rs. 72,60,623/-, the same was pointed out to the Court on 11.06.2014. The learned counsel submits that petitioner cannot have the amount and the TDR also. The Resolution has been rightly passed by the Municipal Corporation.

5. It is not a matter of dispute that the land of the petitioner was acquired under the provisions of the Maharashtra Regional and Town Planning Act, 1966 read with the Land Acquisition Act, 1894 bearing land Gut No. 509 admeasuring 2 H. 32 R. situated at Mehrun, Taluka

and District – Jalgaon. The award was passed by the Land Acquisition Officer detailing the compensation amount of Rs. 37,31,913/- which included the market value of Rs. 25,91,606/-. The remaining amount was 30% solatium and interest.

6. The petitioner filed a reference under Section 18 of the Land Acquisition Act, 1894 before the reference Court. The Land Acquisition Reference filed by the petitioner was allowed and as per the award passed by the reference Court the petitioner filed an execution proceeding for recovery of Rs. 4,51,40,505/-.

7. In the execution proceeding, it appears that the statement was made by respondent no. 6 that because of its weak financial position it cannot deposit the huge amount. Thereafter, in the said execution proceeding it appears that the compromise had taken place between the parties. The Court on April 25, 2014 passed an order below Exhibit 1 in Regular Darkhast No. 157 of 2014, the same reads thus -

"

ORDER

[1] The Judgment Debtor, Municipal Corporation, Jalgaon is at liberty to consider the alternative proposal of T.D.R. claimed by decree holder.

[2] The learned Commissioner of Jalgaon Municipal Corporation may consider the quantum of T.D.R. against the acquired land of the decree holder as per the provisions of Maharashtra Regional Town Planning Act along with its corresponding rules.

[3] The Judgment Debtor, Municipal Corporation, Jalgaon is at liberty to ask the claimant decree holder Vilas Bhalchandra Khadke to redeposit the payment of compensation earlier paid, if any.

[4] The Judgment Debtor, Municipal Corporation, Jalgaon through its Commissioner is hereby directed to submit the compliance report by following the required provisions of law and rules for the appropriate disposal of this execution proceeding.

[5] The parties are directed to comply the order within the period of three months."

8. Thereafter, it appears that joint pursis was submitted by the petitioner and respondent no. 6 to the effect that the petitioner has repaid the compensation amount and that respondent no. 6 has issued the TDR and the grievance does not subsist and the Darkhast be withdrawn. The Court, thereafter, proceeded to pass an order in the said Darkhast on 11.06.2014, the same reads thus -

" This execution proceeding arising out of the judgment and order passed by Ld. Jt. Civil Judge Senior Division in LAR No. 454/2004 is for recovery of due amount to the tune of Rs.4,51,40,505/- (Rs. four crores fifty one lacs forty thousand five hundred five only). It reveals from the execution proceeding that initially some megar amount was deposited by the judgment debtor municipal corporation however, subsequently both the parties arrived at compromise. The decree holder agreed to accept the recovery of amount in lieu of TDR. The defendant municipal corporation through its appropriate authority have also consented for the same. Accordingly, order was passed by this Court and in compliance of the said order, both the parties have filed pursis today vide Exh.15. Both the parties have jointly mentioned about the full satisfaction of the decree. The initial amount deposited by municipal corporation is refunded by the decree holder. Similarly, the judgment debtor municipal corporation have issued TDR certificate in requisite proforma through its appropriate authority. In other words, both the parties are fully satisfied by way of above stated compliance. Hence, the present execution proceeding is hereby closed in full satisfaction as per the joint pursis filed on record vide Exh. 15. Proceeding stands disposed of."

On that day, it appears that application was filed by respondent no. 6 that in fact the petitioner should be directed to pay an amount of Rs. 72,60,623/-, however, the Court passed an order as referred supra by closing the execution

proceeding in full satisfaction as per the joint pursis on record Exhibit - 15.

9. In the impugned Resolution bearing no. 601, the Corporation seems to have woken up after three years and passed a Resolution to the effect that TDR certificate issued to the petitioner was cancelled as the compromise was not properly entered into and there appears to be some malpractice. Even Resolution was passed to take up proceeding before the higher Court.

10. Respondent no. 6 has not taken up any proceeding till date against the order passed by the reference Court disposing of the Darkhast towards the full and final satisfaction.

11. Unless the order passed in Darkhast is assailed before the Appellate / Higher Forum the parties are bound by the orders passed.

12. It is not the case that the respondent / Corporation has deposited the amount under decree

which now would be more than Rs.5,00,00,000/- (Rs. Five Crores only). The Municipal Corporation in lieu of the compensation amount to be paid to the petitioner issued the TDR and the same was accepted. It also appears from the record that the petitioner deposited less amount than what he had received. The petitioner as observed above had received an amount of Rs.37,31,913/-, however had only repaid Rs.28,23,606/- which was inclusive of Rs. 2,32,000/- towards the processing fees. In fact, the petitioner ought to have deposited in all 37,31,913/- along with processing fees after it was agreed between the parties.

13. Now the statement has been made by the learned counsel for the petitioner that the petitioner would deposit an amount of Rs. 11,40,307/-. That would resolve the issue.

14. We have considered the matter on the ground that there is a judicial order passed by the Court. Before the judicial forum the parties have

settled the matter and that order has become final and the same is not assailed till date and so also the petitioner has shown his willingness to deposit an amount of Rs. 11,40,307/- within a period of three (03) weeks from today. If said amount of Rs. 11,40,307/- is deposited within three (03) weeks, the impugned Resolution shall stand set aside. The TDR as was issued by the respondent in the Darkhast No. 157 of 2014, the petitioner can utilise the same in accordance with law.

15. Writ Petition stands disposed of accordingly.
No costs.

[A. M. DHAVAL, J.] [S. V. GANGAPURWALA, J.]

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